IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1972 OF 2006

-: ALONG WITH :-

CIVIL APPLICATION NO. 879 OF 2006

S. S. M. Arshad)
Indian Inhabitant, Age 56 years,)
Occupation Business, at present)
residing / carrying on business)
from No.30, (Old No.44), North)
Boag Road, Narasimmam Salai,)
T. Nagar, Chennai-600 017)
(Tamil Nadu). .. ..).. Petitioner.

Versus

1) Maharashtra State Board of)
Secondary & Higher Secondary)
Education, represented by its)
Director & Chairman, Shivaji)
Nagar, Pune - 411 005.)
2) The Public Information)
Officer, Maharashtra State)
Board of Secondary & Higher)
Secondary Education,)
Represented by its Secretary)

Shivaji Nagar,Pune-411 005.)

3) Government of Maharashtra)

through Secretary, School)

Education Department, having)

its office at Mantralaya)

Annex, Mumbai - 400 032.)... Respondents.

Mr. A. P. Datar, Sr. Advocate with Mr. S.B. Prabhavalkar & Mr. R. Venkatvardan for the Petitioner.

Mrs. D. Chavan for the Respondents.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 3RD APRIL, 2006.

JUDGMENT (Per V.G.Palshikar,J.):

By this petition, the Petitioner has made the following prayers:

(a) For a Writ of Mandamus and/or any other appropriate writ, direction or order in the nature thereof under Article 226 of the Constitution of India, directing the 1st Respondent to furnish a copy of the report of the Enquiry Committee to the Petitioner without any further delay.

(b) For a Writ of Certiorari and/or any other appropriate writ, direction or order in the nature thereof under Article 226 of the Constitution of India, calling for the entire records leading to the termination of the contract of the Petitioner by the first Respondent vide its letter dated 8th August, 2005 and on perusal thereof this Honourable Court be pleased to quash and set aside the report of the Enquiry Committee initiated pursuant to communication dated 17th May 2005 and alleged concluded as communicated vide letter dated 8th August, 2005 with further directions to the Respondent Nos.1 and 2 to hold fresh enquiry by appointing and constituting a new Committee thereby giving an opportunity to the Petitioner to be heard and represented before the said Committee in a time bound programme.

(c) That pending the hearing and final disposal of the above petition, this Honourable Court be pleased to direct the Respondent Nos.1 and 2 to assign the contract of printing

question papers, model answer sheets and other confidential documents in respect of the examination to be held in October 2006 and March 2006 to the Petitioner.

(d) In the alternative to the above, the Respondent Nos.1 and 2 be directed to call for open tenders giving specifications of the expertise and experience required before awarding contract for printing confidential documents from contractors having requisite experience with further directions to the Respondent Nos.1 and 2 to permit the Petitioner to participate in the said contract and conduct his offer/tender in accordance with set norms and without any bias or malice against the Petitioner.

(e) For a Writ of Mandamus and/or any other appropriate writ, direction or order in the nature thereof under Article 226 of the Constitution of India, directing the Respondents to call for open tenders giving specifications of the expertise and experience required before awarding

contracts for printing confidential documents.

(f) For a temporary injunction and order of this Honourable Court, pending the hearing and final disposal of the above petition, restraining the Respondents, their servants, agents, officers and/or any other person or persons claiming by under or through them from awarding the contract in favour of any other party unless a transparent system of calling for tenders is followed.

(g) For interim and ad-interim reliefs in terms of prayer (c), (d) and (f) above;

(h) For costs of and incidental to this petition.

(i) For such other and further reliefs as the nature and circumstances of the case may require.

2. At the outset an objection was raised on behalf of the Respondent Board for maintainability of this writ

petition on the ground that this Court has taken a view in the following two cases :

(i) The Raja Bahadur Motilal Poona Mills Ltd. v/s State of Maharashtra & Others. 2002 (4) All.M.R. 429.

(ii) Oil & Natural Gas Corporation Limited v/s City & Industrial Development Corporation' of Maharashtra Limited & Others. 2005(1) Bom.C.R. 802.

That writ jurisdiction under Article 226 of the Constitution of India need not be exercised by this Court when alternate efficacious remedy by way of civil suit is available, particularly in cases arising out of contractual rights or obligations. While reiterating this view taken in Raja Bahadur Mill's case this Court in the case of Oil & Natural Gas Corporation Limited observed the ratio of Raja Bahadur Mill's case. It was also noticed in our both the judgements that the recurring submissions made at regular intervals seeking to maintain a writ for enforcement of contractual rights or obligations. These judgments noted this aspect and dealt with all the contentions. Inspite of that the Counsel for

Petitioner urged that we should entertain this petition.

3. In Raja Bahadur Mill's case in para 14, this Court observed thus:

> "This question comes up before the court in regular intervals and the tendency to flout the rule of law is on increase and consequently judicial activism is also increased, and in several cases writ jurisdiction is moved inspite of the fact that alternative efficacious remedy is available on a specious plea and it is expedient in public interest to do so. In an exceptional case of public interest where large number of people are affected it may be that a writ petition could be entertained but the question is whether it would be a writ jurisdiction to be invoked as a matter of course even in dispute intra parties where there is no public interest at all or involved at all."

This Court then proceeded to examine the several

judgments cited before it by the learned Counsel then appearing and held that a writ jurisdiction should not in such a situation be exercised.

4. Today again this submission is made requiring this Court to keep aside the consistent view taken by this Court in the above mentioned cases because in this case the Petitioner is not claiming any damages, is not complaining about any breach of contract The complaint is of violation of the principles of natural justice and arbitrary termination of contract which placing reliance on certain judgments of the Supreme Court it is contended that writ has to be entertained.

5. It is pertinent to note before we further deal with the submission raised on behalf of the Petitioner that the Petitioner was for quite some time sole contractor in whom confidence was reposed by the Education Board of the Government of Maharashtra of framing question papers and printing them for the examinations of the Higher Secondary Certificate conducted by the Board annually. It naturally involves careers of millions of students of the State and is therefore a matter of great importance to the State. In all the judgments cited before us, as we

may explain later, the contract concerned or involved pertained to supply of material or manufacture of articles and the like dealing with the inanimate objects entered with Indian Governments or some other public sector authorities. In the present case we are dealing with the careers of students in the State of Maharashtra. This distinguishing features has to be kept in mind while considering the question of exercising writ jurisdiction in the matter flowing out of the contractual obligation.

6. The first decision relied upon is **ABL International Ltd. and Another v/s Export Credit Guarantee Corporation of India Ltd. and Others,** reported in (2004) 3 SCC 553. Reliance was placed on paragraphs 21, 27, 53 and 54 of the said Judgment. This judgment was concerned with the supply of 3000 metric tons of tea. Contract of supply of tea was the subject matter of litigation and it was in this context that the observations made by the Supreme Court of India are to be considered. Heavy reliance is placed on the observation of the Supreme Court in paras 21 and 22 and it is claimed that the present action of the Respondent Board results in violation of the rights of the Petitioner guaranteed by Article 14

of the Constitution of India. More particularly the following portion of the judgment of the Supreme Court of India was relied upon:

> "The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the Sate always to so act, even in contractual matters."

Therefore, an action which is arbitrary can be interfered with by the Court even though alternate remedy by way of suit is available. This is one of the aspect on which emphasis was laid. In para 27 of this very judgment the Supreme Court of India has observed on the question of maintainability of such writ petition that in an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. It is, therefore, expected by the Supreme Court of India that this Court while exercising writ jurisdiction in contractual matters shall see that the matter in hand is an appropriate case for interference by this Court in writ jurisdiction. In para 28 it is observed by the

Supreme Court of India that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. It is, therefore, exercise of a discretionary jurisdiction of this Court which is sought to interfere in a matter of contract which has come to an end and which deals with setting of examination papers.

7. Then reliance was placed on the judgment of the Supreme Court of India **Style (Dress Land) v/s Union Territory, Chandigarh and another**, reported in (1999) 7 SCC 89 for the contention that alternate remedy need not be insisted upon and in a fit case even existence of alternate remedy will not bar exercise of writ jurisdiction of this court. The submission has to be therefore tested to find out whether present is an appropriate case to interfere in writ jurisdiction. In our opinion, exercise by us of our writ jurisdiction in this case would be most inappropriate. Whatever injury that has been caused or likely to be caused to the Petitioner is injury to his individual right which can be established in proper court of law by giving cogent evidence for the purpose of that

injury.

8. The third decision relied upon of the Supreme Court of India in **Union of India & others v/s Dinesh Engineering Corporation & Anr.,** reported in (2001) 8 SCC 491, deals with interference in the matter of policy decision. Relying on this decision, it is argued that the policy decision for the last 30 years was to give the contract to the Petitioner therein alone. Now the policy is changed without giving reason and therefore this Court ought to interfere in writ jurisdiction. Particularly reference was made to prayer by which a direction is sought to the Respondents to grant the question papers setting contract by recourse to process of Tender. Cause of action for such prayer has not yet arisen. As and when an action is taken, it can be impugned. This Court has factually taken a view that the question of interference can be examined.

9. Then reliance was placed on the Judgment of the Supreme Court of India in **Mahabir Auto Stores and Others v/s Indian Oil Corporation and Others,** reported in AIR 1990 SC 1031, seeking interference in matters covered by Article 298 of the Constitution of India.

First thing which is to be borne in mind was that case involved termination of tract of dealership given by Indian Oil Corporation. It again dealt with inanimate object and there the Supreme Court has observed in paras 12, 18 and 20 that interference in certain cases may be permissible. In para 12 it is observed :

> "It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution."

Therefore, the exercise of power by the Respondents in cancelling contract of the Petitioner can be assailed if the order is not informed by reason. The order impugned is at page 39 and it does give sufficiently and clearly the reason why the Board is terminating the contract of the Petitioner. It reads thus:

> "We deeply regret to inform you that during H.S.C.Examination of March 2005 there was,

> delay in supply of confidential material, short supply of confidential material, wrong packeting, mispacketing, lack of packeting details, etc. and due to which Board had to go through very embarrassing situations. Even the matter was raised in the State Legislature."

The Petitioner was informed about it and an enquiry separately is pending in that regard. This was, therefore, the reason why the Board immediately terminated the contract of the Petitioner. It cannot be said that this reason is in any manner inadequate or it does not inform the Petitioner of the reason why his contract was terminated.

10. In our opinion, therefore, taking into consideration the factual aspect existing in this case, present is not a fit case for exercise of writ jurisdiction by this Court, particularly, when in two cases as referred above after exhaustive consideration of the case laws on the point view has been taken. Nothing was relied or contended which can pursuade us to depart from the view consistently taken by this Court. Hence, the petition fails and is rejected.

11. The above observations are only in relation to the maintainability of the writ petition for the reliefs claimed and the observation pertains to maintainability of writ and are not on merits of the case which the Petitioner may agitate in an appropriate forum.

12. Civil Application also disposed of as infructuous.

Sd/-

(V. G. PALSHIKAR, J.)

Sd/-

(V. R. KINGAONKAR, J.)